



COMMONWEALTH OF KENTUCKY

ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

403 WAPPING STREET
FRANKFORT, KENTUCKY 40601

JOHN P. HAYES
Court of Appeals

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

THOMAS J. KNOPF
District Court

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-17

(Formal)

QUESTION: May a trial commissioner represent clients in litigation against the Commonwealth of Kentucky?

ANSWER: Yes, subject to the limitations of SCR 5.060.

REFERENCES: SCR 5.060; Kentucky Bar Association Ethics Opinion E-214.

OPINION: (November 1980):

SCR 5.060 reads as follows:

A trial commissioner shall not personally engage in the practice of criminal law in the district court of the district in which he serves as commissioner and shall not act as an attorney in any other matter in which he has taken any action as a trial commissioner. If a trial commissioner anticipates employment as an attorney in a matter coming before him, he may decline to act in the matter.

By placing certain limitations on the practice of law by trial commissioners, the Kentucky Supreme Court impliedly placed its stamp of approval on all other types of practice. If it had wished to create any other limitations, it would have so stated in its rule. For this reason, we hold that a trial commissioner may represent parties who are engaged in litigation against the Commonwealth of Kentucky, unless, of course, he has taken some action in the matter as a commissioner.

The Kentucky Bar Association, in its ethics opinion E-214, held that a trial commissioner may not "represent a party bringing suit against the Commonwealth of Kentucky." At the time of that opinion (March 1979) the Ethics Committee of the Kentucky Judiciary did not exist, for it was not created until the enactment of SCR 4.310 on May 14, 1979, effective July 1, 1979. At the time of its decision E-214, the ethics committee of the Kentucky Bar Association was the only source for advisory opinions on judicial ethics. Since the creation of the Ethics Committee of the Kentucky Judiciary, however, the latter is, of course, the sole authority for advisory opinions on questions of judicial ethics.

In reaching its decision, the Bar Association relied on an earlier Bar Association opinion, E-190, which held that a lawyer who was retained by a city could not bring suit against the city in an unrelated matter. Reasoning that the situation of the trial commissioner was similar to that of the city attorney, the ethics committee held that there would be a conflict of interest if a trial commissioner were to engage in litigation against the Commonwealth.

We disagree. We think that there is a distinction between an attorney who is retained by a unit of government to look after its legal business and a trial commissioner who in no way represents any unit of government. His function is to assist in the administration of justice. If service as a trial commissioner were to prevent his litigating against the Commonwealth, he could not handle tax matters involving the Commonwealth, nor could he appear before regulatory bodies on behalf of a client. We do not think the Kentucky Supreme Court intended to so limit the professional activities of trial commissioners.

SCR 5.060 was amended several months after publication of E-214. Effective January 1, 1980, the amendment prohibits a trial commissioner from engaging in criminal law cases in the district court in which he serves. If the Court had wished to give E-214 the status of a rule, it would undoubtedly have done so at that time. That it did not is persuasive evidence that it did not wish to so limit the practice of trial commissioners.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary